

MONTANA PUBLIC DEFENDER COMMISSION

Minutes

Office of the State Public Defender – Central Office
44 West Park, Butte, MT

June 20, 2007

(Approved at the July 27, 2007 Commission Meeting)

Call to Order

The Montana Public Defender Commission meeting was called to order by Chairman Jim Taylor at 9:05 a.m.

Commissioners Present

In Butte: Wendy Holton, Helena

By Teleconference: Dan Donovan, Great Falls; Stephen Nardi, Kalispell; Mike Sherwood, Missoula; Caroline Fleming, Miles City; Tara Veazey, Helena; Betty Bichsel, Edgar; and James Park Taylor, Missoula

Commissioners Absent

Jennifer Hensley, Butte; Vic Miller, Harlem; and Ivan Small, Poplar

Interested Persons

In Butte: Ed Amberg, Department of Public Health and Human Services (Montana State Hospital); Cathy Day, American Civil Liberties Union of Montana

By Teleconference: Pat Gervais, Legislative Fiscal Division; Beth Brenneman, Montana Advocacy Program

Approval of Minutes from the March 2, 2007 Meeting

Commissioner Nardi asked if the Commission voted on the Caseload Standard twice at the March meeting. Chairman Taylor said yes, the item was moved to the action agenda following discussion, and an official vote was then taken on the action item. Commissioner Nardi clarified that the Caseload Standard included in the June meeting packet (exhibit 1) was what the Commission adopted, and that the Suggested Caseloads (exhibit 2) are not part of the Standard but are to be posted on the website. Commissioner Nardi moved to approve the minutes. Commissioner Bichsel seconded the motion. The motion carried.

Commission Changes

Administrative Director Harry Freebourn will distribute the resume of new Commissioner Vic Miller from Harlem. Commissioner Miller was unable to attend the meeting.

Commissioners Veazey, Sherwood, Bichsel and Holton are up for reappointment. All appointments are to be filled prior to July 1.

Reports

Chief Public Defender Report

- *Public/Appellate Defender System Update*

Chief Public Defender Randi Hood reported that almost every office is fully staffed (exhibit 3). OPD is experiencing a moderate amount of turnover, but continues to have a good pool of applicants, including people with experience.

Chief Hood will meet with the regional deputy public defenders in August. Now that the ramp-up is complete and offices are fully staffed, she is ready to start looking at adopting “best practices across the state” that focus on more efficient ways to deliver services system-wide. She will also begin work on small but significant problems that have been identified in various regions (e.g., Region 9 has considerable costs for DUI videos, while other regions have none).

The Appellate Defender’s Office has filed more appeals since July 1 than in their entire previous history. Yesterday they received a favorable decision in the writ filed regarding the death penalty in the Bozeman homicide case. Chairman Taylor congratulated Chief Appellate Defender Jim Wheelis and his staff on their great work on this case. The Appellate office is also working on writs regarding illegal practices in courts of limited jurisdiction and assignment of public defenders in post conviction relief cases.

- *Legislative Update*

Chief Hood reviewed the Legislative report (exhibit 4). Four of the five OPD-requested bills have been signed by the Governor. The budget process was painful, but OPD was eventually funded at the requested level. Chief Hood thanked Mr. Freebourn for his hard work during the session. She also thanked Commissioners Hensley, Taylor and Sherwood for their work on SB 569 which was tabled in committee. The bill would have amended Title 47 to require that conflict cases be handled internally, and to make assignment of counsel by OPD subject to inquiry and denial by the court.

- *FY 2007 and 2009 Biennium Budget Update*

Mr. Freebourn noted that based on high level estimates, there is a projected shortfall for FY 07 of approximately \$247,000 (exhibit 5). In part, this is due to delays by contractors in submitting their bills to OPD. Shortly after projections were made for supplemental funding and a request was made to the legislature, four contract attorneys billed OPD a combined total of over \$200,000 because they had been holding bills for several months. Chief Hood asked that the Commission discuss the issue of timely contractor billing at a future meeting.

Several steps have been taken to alleviate the projected shortfall including curtailing supply purchases and travel and rescheduling planned FY 07 training sessions for next year. In addition, Chief Hood, Training Coordinator Eric Olson, Contract Manager Larry Murphy and the regional deputy public defenders have increased their caseloads to help hold outside services costs down through the end of June. The Appellate Defender office is also deferring some case activity to July. The Just Ware costs (approximately \$185,000) could also be obligated next year if necessary, rather than in FY 07.

Mr. Freebourn discussed the variances between the FY 07 forecast and the FY 08-09 appropriation (exhibit 6). Personal services and operating costs will increase in FY 08 because the ramp-up is complete (OPD wasn't fully staffed and all offices weren't open for all of FY 07). Outside services in FY 07 included significant transitional costs for cases and attorneys inherited from the prior system, so contract attorney costs are predicted to decrease in FY 08.

Chief Hood and Mr. Freebourn are working with the regional deputies and the managing attorneys to develop detailed budgets for FY 08. The collaborative process is intended to make sure each office is aware of their spending as well as to allow the Central Office to identify problems in specific regions (e.g. the Region 9 DUI video costs). Once budgets are finalized, detailed budget reports will be distributed to each office on a monthly basis to assist in monitoring expenditures.

- *IT Update*

Mr. Freebourn offered kudos to the Case Information Management Project team for defining the business processes, and to IT manager Teri Heiland for negotiations with New Dawn Technologies, which came in with a bid of \$183,405. Mr. Freebourn reviewed the projected costs and implementation time line (exhibit 7).

- *Mental Health Evaluation Protocol*

Mr. Olson and Mental Health Consultant Dr. Laura Wendlandt, in collaboration with mental health providers throughout the state, developed a protocol for mental health evaluations for OPD clients (exhibit 8). The protocol details a four-tier evaluation process, describes how FTE and contract attorneys are to engage mental health providers to ensure that an appropriate level of service is provided, and will specify rates for services. A video training session regarding the protocol is mandatory for all FTE and contract attorneys. Providers will be asked to accept the protocol as part of a Memorandum of Understanding, which will be required of all mental health experts performing services for OPD as of July 1.

Mr. Olson asked the Commission to set provisional rates while the protocol is being implemented and public comment is solicited (exhibit 9). The goal is to set a fair rate for providers while allowing OPD to contain costs. At Commissioner Nardi's request, Dr. Wendlandt suggested an M.D./Ph.D. rate of \$125 per hour, allowing a percentage for clinicians with lesser training (recommended at 60%). This is below the average private sector rate of \$131.25 per hour, but above the Medicaid/Medicare rate of \$97 per hour (exhibit 10). Commissioner Donovan asked if a maximum rate for psychosexual evaluations should be set, and Chief Hood said that usually the court pays for those types of evaluations.

- *Policies and Procedures*

The Caseload Data Collection (exhibit 11) and Conflict Cases (exhibit 12) policies were presented for the Commission's review. Chairman Taylor suggested changes to the Conflict Cases policy. Chief Hood will draft new language and present the policy again at the next meeting. The Pre-Approval of Client Costs policy (exhibit 13) was presented for information only; it doesn't require Commission approval. Key components of a

Caseload Management policy were discussed and a document will be presented for review at the next Commission meeting.

Public Comment

Ed Amberg, Administrator of the Montana State Hospital at Warm Springs, appreciates OPD's efforts to address the needs of mentally ill offenders with the new mental health protocol. The protocol will help determine when in-patient evaluation is really needed, maximizing the use of Montana State Hospital's limited resources. It will also help in identifying how many evaluations are taking place in communities.

There was no additional public comment.

Old Business/New Business (*Action Items)

Adoption of Rates for Mental Health Experts

Commissioner Nardi moved to adopt the following provisional rate for evaluations performed by mental health experts:

\$125 per hour for M.D./Ph.D. evaluations

LCSW, LCPC and LAC at 60% of M.D./Ph.D. rate

Commissioner Fleming seconded. The motion carried.

The Commission agreed by consensus that these rates will be in effect for 120 days, beginning July 1.

Policy Approval

Chairman Taylor moved to adopt the Caseload Data Collection Policy. Commissioner Donovan seconded. Motion carried.

Next Meeting

Chairman Taylor will circulate possible dates for Commission meetings in July, August, September and October by email.

Adjourn

The meeting adjourned at 10:35 a.m.

Exhibits 1 – 13 have been posted with these minutes to the Office of the State Public Defender website at: <http://www.publicdefender.mt.gov/>. Exhibits 14-18, which were distributed prior to the meeting but not discussed, are also available on the website.